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October 27, 2010*

Attorneys for Cal By-Products

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re
A & A DAIRY, a California general
Partnership,

Debtor.

Case No. BK-10-52539-gwz

Chapter 11

**REPLY TO UNSECURED CREDITOR
COMMITTEE'S OPPOSITION TO
DEBTOR'S MOTION TO APPROVE
CAL BY-PRODUCTS AS CRITICAL
VENDOR AND TO RATIFY LIEN
GRANTED DURING PREFERENCE
PERIOD, WITH CERTIFICATE OF
SERVICE**

Hearing Date: 11/3/10
Hearing Time: 2:00 p.m.

Cal By-Products ("CBP") replies to the opposition filed by the Unsecured Creditor Committee ("Committee") to Debtor's motion to designate CBP as a critical vendor (Ct. Dkt. #81, filed Oct. 20, 2010).

1. It is undisputed that (1) Debtor agreed prepetition to designate CBP as a critical vendor to insure its postpetition delivery of feed to keep Debtor's cattle "fat and happy," effectively maximizing Debtor's value, and (2) Debtor filed its motion to designate CBP as a critical vendor. What is unresolved as part of this motion is (1) whether CBP qualifies as a critical vendor, and (2) if so, what benefit can CBP obtain as a critical vendor.

2. The Committee spends much of its opposition discussing the validity of the note, deed of trust, and certain payments provided by Debtor to CBP on a prepetition basis. CBP recognizes that the Court may enter an order that does not ratify any of these transfers from

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1 Debtor to CBP as a critical vendor. However, the purported invalidity of these transfers is not
2 before the Court as part of the critical vendor motion. As Wells Fargo and CBP previously
3 acknowledged, any efforts to invalidate those transfers must be brought as an adversary
4 proceeding. CBP asserts that it cannot be compelled to surrender or disgorge its property as part
5 of the critical vendor motion.

6 3. CBP and the Committee do not agree as to the proper standard to evaluate a
7 critical vendor motion. The Committee asserts the proper standard is identified by *In re Kmart*
8 *Corp.*, 359 F.3d 866 (7th Cir. 2004), and adopted by *In re Tropical Sportswear Int'l Corp.*, 320
9 B.R. 15 (Bankr. M.D. Fla. 2005). In CBP's prior response brief, it cited the governing Ninth
10 Circuit law. Ct. Dkt. #68, CBP Response at 6, citing *In re Adams Apple, Inc.*, 829 F.2d 1484,
11 1490 (9th Cir. 1987), *In re Hines*, 147 F.3d 1185 (9th Cir. 1998), and five orders from this Court
12 approving critical vendor motions.

13 CBP has not identified any decisions from the Ninth Circuit, its BAP or its district courts
14 addressing *Kmart*. It only identified one bankruptcy decisions from the Ninth Circuit discussing
15 *Kmart*. Ct. Dkt. #68 at 6, citing *In re Berry Good, LLC*, 400 B.R. 741, 747 (Bankr. D. Ariz.
16 2008). CBP cited and applied the test from *Berry Good*, showing the CBP qualifies as a critical
17 vendor. The Committee recognizes the differences in the tests (Ct. Dkt. #81 at 6-7 & n.1). The
18 Committee also concedes that Debtor's acceptance in the CWT program only occurred
19 postpetition: "Hindsight is clearly 20/20 and that if necessity is determined on the date of the
20 filing of the petition, the Debtor and Cal By-Products' position may be well taken." (Ct. Dkt. #81,
21 at 5-6). CBP believes that the determination of a critical vendor by its very nature must be made
22 at or before the petition date—and that CBP was a indeed a critical vendor on the petition date.

23 CBP also learned today of this Court's oral opinion regarding critical vendors in *In re*
24 *Stewart Hay Co.*, Case No. BK-B-09-50581 (D. Nev., Ct. Dkt. #18, filed April 24, 2009). A copy
25 of the transcript is attached as **Exhibit 1**. CBP believes its articulation of the governing law on
26 critical vendors is consistent with the oral order in that case, and that CBP is entitled to be
27 designated as a critical vendor under the standard set forth in *Stewart Hay*.

4. The Committee is unable to determine whether its members are better off with or without CBP's lien. In any event, the Committee requests that if the Court validates the lien but that CBP's position is later wiped out in a foreclosure, "then Cal By-Products should not be allowed a deficiency claim and permitted to participate in the unsecured creditor pool. It should be required to be bound by its election to be treated as a unsecured creditor rather than as an unsecured creditor" (Ct . Dkt. #81 at 8). CBP replies that this request is not properly before the Court in this motion hearing. CBP also replies that the Committee does not cite any authority at all for such a proposition. To be sure, courts have recognized a secured creditor's rights to either (1) voluntarily abandon its security interest to instead participate as an unsecured creditor, or (2) seek a reclassification of its claim to unsecured if its secured position is wiped out in a foreclosure. *E.g., Branch Banking & Trust Co. v. Coffia (In re Coffia)*, Case No. 09-50899, 2010 WL 1872878, *4 (Bankr. S.D. Ga. March 22, 2010), *citing* 11 U.S.C. § 502(j). CBP asserts that any dispute over its status as a secured or unsecured creditor must be resolved in a separate proceeding subject to independent briefing.

DATED this 27th of October, 2010

JONES VARGAS

By: /s/ Louis M. Bubala III
LOUIS M. BUBALA III, ESQ

Attorneys for Cal By-Products

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CERTIFICATE OF SERVICE

1. On October 27, 2010, I served the following document(s):

REPLY TO UNSECURED CREDITOR COMMITTEE'S OPPOSITION TO DEBTOR'S
MOTION TO APPROVE CAL BY-PRODUCTS AS CRITICAL VENDOR AND TO RATIFY
LIEN GRANTED DURING PREFERENCE PERIOD, WITH CERTIFICATE OF SERVICE

2. I served the above-named document(s) by the following means to the persons as listed below:

- a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

CANDACE C CARLYON on behalf of Creditor WELLS FARGO BANK, N.A.

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KEVIN A. DARBY on behalf of Debtor A & A DAIRY

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UNSECURED CREDITORS

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U.S. TRUSTEE - RN - 11

USTPRegion17.RE.ECF@usdoj.gov

- ☐ b. **United States mail, postage fully prepaid** (list persons and addresses):

- ☐ c. **Personal Service** (list persons and addresses):
I personally delivered the document(s) to the persons at these addresses:

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- ☐ e. **By fax transmission** (list persons and fax numbers):

- ☐ f. **By messenger:**

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of October, 2010.

L. Bubala
Name

/s/L. Bubala
Signature

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Exhibit 1

Exhibit 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:	.	Docket No. BK-N 09-50581-GWZ
	.	
STEWART HAY	.	Reno, Nevada
COMPANY, INC.,	.	March 25, 2009
	.	10:19:05 a.m.
Debtor.	.	
.	

HEARING
ON MOTION BY DEBTOR FOR ORDER
AUTHORIZING THE PAYMENT OF NEVADA
HAY GROWERS ASSOCIATION PRE-PETITION
CLAIM PURSUANT TO 11 U.S.C. SECS 503(b)(9),
363(b) AND 105(a)
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GREGG W. ZIVE
UNITED STATES BANKRUPTCY JUDGE

Electronic Court Recorder:	Sylvia Tilton
Transcription:	Typewrite Services Inc. P.O. Box 5804 Sparks, Nevada 89432-5804
Proceedings recorded by digital sound recording, transcript produced by transcription service.	

APPEARANCES:

For the Office of the
U.S. Trustee:

WILLIAM B. COSSITT, ESQ.
300 Booth Street, Ste. 2129
Reno, Nevada 89509

For Stewart Hay
Company:

Lewis and Roca, LLP
BY: TRICIA M. DARBY, ESQ.
50 W. Liberty St., Ste. 410
Reno, Nevada 89501

1 THE COURT: In the matter of Stewart Hay Company.

2 MR. COSSITT: Bill Cossitt, Office of the United
3 States Trustee.

4 MS. DARBY: Good morning, your Honor. Tricia
5 Darby on behalf of Stewart Hay Company.

6 THE COURT: All right.

7 I signed an order shortening time on March 18th,
8 as docket number 17, allowing this hearing to go forward.

9 Because it appears a sufficient finding was --
10 sufficient showing was made that the purchase of this hay
11 from this particular entity was critical to the ongoing
12 business of the debtor. All right.

13 And the motion was brought pursuant to 503(b)(9)--
14 I think it's (b)(9)--which provides an administrative claim
15 if goods were delivered to the debtor within twenty days
16 prior to the date of the filing of the petition and it was
17 in the ordinary course of business.

18 And it's alleged that some twelve thousand one
19 hundred and fifty-six dollars and ninety-one cents is the
20 obligation incurred by the debtor for goods that were so
21 delivered.

22 Is that correct?

23 MS. DARBY: That's correct, your Honor.

24 THE COURT: Was there an affidavit that said that?

25 MS. DARBY: You know, I don't believe that Mr. Kim

1 Stewart's affidavit said that.

2 THE COURT: I mean you signed a declaration that
3 is hearsay on hearsay, so that one didn't -- wasn't of any
4 great help to me.

5 I thought I saw -- there's a declaration of Kim
6 Stewart, who is the president. I've looked at that.

7 Your motion, by the way, was docket number 12
8 filed on the 17th of December;

9 The declaration of Mr. Stewart was docket number
10 13, also filed on the 17th. And it's got nothing in here
11 about the timing. So that -- I assume that I'm being asked
12 to accept that.

13 I did read a joint notice of non-opposition filed
14 by counsel for Jeffrey and Gregory Rogers and also for
15 Cindy Sloan; Katee Ann Sloan, a minor, by and through her
16 guardian ad litem; Cindy Sloan; Tyler Sloan; Kristy Sloan
17 and Brandee Sloan.

18 And just to make sure that the Rogers made it
19 clear to me that they did not oppose, they filed their own
20 notice of non-opposition. One is docket 27 and one is
21 docket 29. So I know the Sloans don't -- not only the
22 Sloans, but the Rogers, truly do not object.

23 And I'm not exactly sure who those folks are. Are
24 they creditors?

25 MS. DARBY: Yes, your Honor. They are the

1 plaintiffs in the wrongful death actions that have been
2 brought against the debtor.

3 THE COURT: And of course they want to make sure
4 that the debtor has the ability to satisfy any judgment
5 that may be entered against it.

6 MS. DARBY: That is correct, your Honor.

7 THE COURT: All right.

8 Now what you're asking -- I don't have any problem
9 with the twelve thousand one hundred and fifty-six dollars
10 and ninety-one cents because it is an administrative claim,
11 assuming I would want a declaration from Mr. Stewart
12 establishing the basis for that.

13 And if that's filed then I will sign an order
14 regarding that.

15 The more difficult issue is the remaining amounts
16 that are due and owing to the supplier. Because there's a
17 total of a hundred and sixteen thousand two hundred and
18 four dollars if I read your motion correctly.

19 MS. DARBY: That is correct, your Honor.

20 THE COURT: And so that after the twelve thousand,
21 what you really have is about a hundred and four thousand
22 that was delivered more than twenty days prior to the
23 filing of the petition.

24 Is that also accurate?

25 MS. DARBY: That is correct, your Honor.

1 THE COURT: And what is the basis for me paying
2 them?

3 You cited me to railroad reorganization cases.
4 B&W Enterprises, a decision of the Ninth Circuit which can
5 be found at 713 F.2d 534 (1983), specifically addressed the
6 railroad reorganization cases and said they weren't
7 applicable in that case.

8 And I can't find any case in the Ninth Circuit
9 that looks to those.

10 This is really a critical vendor motion once you
11 go outside the administrative claim period. Is that
12 accurate?

13 MS. DARBY: That's correct, your Honor.

14 THE COURT: And you cite me all kinds of authority
15 from jurisdictions outside the Ninth Circuit.

16 Now let's take a look at the Ninth Circuit. First
17 of all B&W Enterprises is really a 549 case. When it was a
18 Chapter 11 there were certain contracts that were entered
19 into and certain payments that were made.

20 Then it was converted to a seven and the trustee
21 went back to get those. It is a violation of Section
22 541 -- or 549, excuse me, for the reason that nobody ever
23 obtained a court order.

24 And since they didn't have a court order they said
25 well, it was necessary for us to continue to honor these

1 agreements in the defense and they just looked at the
2 railroad reorganization case and said no, not applicable.

3 This case is often cited for the proposition that
4 perhaps there's no basis for a critical vendor's order
5 because there was specific reference to a doctrine of
6 necessity. And the doctrine of necessity was one of the
7 bases for the railroad reorganization cases.

8 However, there have been developments in the Ninth
9 Circuit and none of them are startling clear.

10 First of all there's In re Adam's Apple, a Ninth
11 Circuit case found at 829 F.2d 1484 (1987). And it was
12 discussing 364(e) and what is good faith. And really what
13 was there -- involved in that case was a cross-
14 collateralization issue, and it found that that was not per
15 se a violation of good faith.

16 And then they talked about -- and there's some
17 debate of whether or not the discussion--I think it's at
18 Page 1490--is dicta:

19 "Appellants assert as a general manner that CWB
20 failed to act in good faith because it intended to
21 secure an otherwise unsecured pre-petition claim
22 and because securing such a claim is improper
23 under the Bankruptcy Code."

24 And then it talks about cross-collateralization.
25 And then it talks about the arguments that appellants

1 advance:

2 "First appellants claim that the cross-
3 collateralization clause violates a fundamental
4 tenet in bankruptcy law that like creditors must
5 be treated alike, which is usually the opposition
6 to motions seeking to pay critical vendors. That
7 it violates the priority scheme of the Code and
8 treats what would probably be similarly classified
9 creditors differently. This argument is simply a
10 restatement of the general assertion that cross-
11 collateralization clauses are legal per se. It
12 is flawed because the fundamental tenet conflicts
13 with another fundamental tenet, rehabilitation of
14 debtors, which may supersede the policy of equal
15 treatment. Cases have permitted unequal treatment
16 of pre-petition debts when necessary for
17 rehabilitation in such contexts as pre-petition
18 wages to key employees, hospital malpractice
19 premiums incurred prior to filing, debts to
20 providers of unique and irreplaceable supplies and
21 peripheral benefits under labor contracts." Cites
22 a case out of the Second Circuit and a Law Review
23 article at 54 Am. Jur. -- Am. Bankr. L.J. 173.
24 "In addition Congress provided in Section 364(d)
25 that in pre-petition debts even secured interest

1 may be subordinated by post-petition obligations.

2 Although this more traditional application of
3 364(d) does not involve disparate treatment of
4 creditors it illustrates a Congressional
5 willingness to subordinate the interest of pre-
6 petition creditors to the goal of rehabilitation."

7 And then it says:

8 "Cross-collateralization may provide the only
9 means for saving a failing company."

10 So the analogy would be critical vendors do the
11 same thing. And it's really akin to a doctrine of
12 necessity.

13 I do not consider that necessarily to be dicta.
14 Because the Court had to make that finding to get to the
15 holding that cross-collateralization did not violate the
16 Code.

17 And it talks about a fundamental tenet of rehab.

18 There's something in the Ninth Circuit that
19 said and, I've been told that take the belief that critical
20 vendor motions aren't allowed. I don't think they've read
21 this case.

22 Now there has also been developed in the Ninth
23 Circuit a doctrine of necessity that is outside of the
24 railroad reorganization cases. And that can be found in a
25 couple of cases;

1 The first was In re Hines, 147 F.3d 1185 (9th Cir.
2 1998). And this had to deal with the payment of attorney's
3 fees and allotted on a basis of a doctrine of necessity.

4 And that was supported by another case, In re
5 Sanchez, 241 F.3d 1148, a 2001 case citing to Hines and
6 allowed attorney's fees paid that didn't strictly comply
7 with the provisions of the Code on the basis of the
8 doctrine of necessity and cited the Trednea (pho) case.
9 And I've read that one as well.

10 That case -- I thought I had it in front of me.
11 But at any rate, that's at 264 BR 573. It's a Ninth
12 Circuit BAP case in 2001. And it's worth reading as well
13 on this point.

14 So I do believe -- well, in fact I do have it in
15 front of me. That's another attorney's fees case that
16 cited Hines and quoted the doctrine of necessity.

17 So we have the Ninth Circuit, we have the BAP in
18 the Ninth Circuit recognizing the doctrine of necessity.
19 Not in instances that involve critical vendors.

20 But if you look at Adam's Apple where it said
21 cross-collateralization may be necessary to allow a debtor
22 to rehabilitate, certainly critical vendors it if's truly a
23 critical vendor, if it's something like a sole source and
24 even in the Capehart decision Judge Easterbrook in that
25 decision held that there was a higher burden of proof but

1 that it was possible to establish a basis for critical
2 vendors with a quantum of evidence.

3 Here the evidence and the only evidence that has
4 been provided to me would be that this is a sole-source
5 provider at this time because of the conditions that exist.

6 Is that correct?

7 MS. DARBY: That is correct, your Honor.

8 THE COURT: Yeah.

9 Now right now it's doing business with the debtor
10 on a COD basis.

11 Is that also correct?

12 MS. DARBY: That is correct, your Honor.

13 THE COURT: And the debtor can't afford to operate
14 on that basis.

15 MS. DARBY: That is correct.

16 THE COURT: That's all established by the
17 declaration.

18 Therefore I am going to grant the motion and allow
19 the payment of the hundred and four thousand dollars that
20 it would be outside the administrative expense provisions
21 of Section 503(b)(9) on the condition that -- what is the
22 name of this, NH --

23 MS. DARBY: Nevada Hay Growers Association, your
24 Honor.

25 THE COURT: Yeah. -- Nevada Hay Growers

1 Association agrees to continue to do business with the
2 debtor on the preexisting credit, pre-petition credit
3 terms. If it does not agree to do that it shall not be
4 paid.

5 Any problem with that, Mr. Cossitt?

6 MR. COSSITT: None, your Honor.

7 I just spoke with debtor's counsel on a couple of
8 occasions because we were going to oppose, frankly, not
9 having a committee formed in time.

10 But once you look at the schedules and statements
11 there really are two creditors. Those are the wrongful
12 death cases that are pending. The rest of the creditors
13 are de minimis.

14 And once I found out that they were on board and
15 didn't oppose the motion, I'm not throwing up roadblocks
16 for anybody to --

17 THE COURT: I'll take -- I don't think anybody
18 will review this case because nobody argues with the
19 ruling. But I would take judicial notice of the schedules
20 and statements that would support the position that you
21 just articulated.

22 MR. COSSITT: Thank you, your Honor.

23 MS. DARBY: Thank you, your Honor.

24 THE COURT: Prepare the order. There does not
25 have to be any signature because there wasn't any -- .

1 But you need to take a look at the correct law.

2 MR. COSSITT: And we need a declaration as well;
3 is that correct?

4 THE COURT: Yeah. I need that declaration.

5 MS. DARBY: I will --

6 THE COURT: Because right now I don't have any
7 evidence what occurred twenty days --

8 MR. COSSITT: Right.

9 THE COURT: I'm only going to allow the
10 administrative expense payment. Of course it doesn't
11 really mat -- let's take -- I'd still want it just so it's
12 in the record. All you have to do is file it.

13 Since I am going to allow the payment of the
14 remaining pre-petition claims it isn't critical, but I
15 think you can do one order. And make that distinction
16 between the administrative claim and the non-administrative
17 claim. I don't have a problem with that.

18 But file an affidavit from Kim Stewart that
19 supports the amount that will be in the order regarding the
20 administrative expense.

21 MS. DARBY: I will do that, your Honor.

22 (Discussion off the record between the Court and the
23 courtroom deputy.)

24 THE COURT: I've written this out before, I've
25 discussed it before. This might be one where folks may

1 want to get a copy of this transcript to see how I approach
2 critical vendors.

3 MR. COSSITT: Very good.

4 THE COURT: I would just suggest that. That way I
5 don't have to do it again --

6 MR. COSSITT: Every time?

7 THE COURT: -- and again and again.

8 And somebody did a good job of it in Herbst.

9 MR. COSSITT: Yeah. That's right.

10 THE COURT: It was in a footnote I think on the
11 Chevron motion. I could be wrong. But we should pull that
12 out, too, to support it.

13 Because they did -- I had obviously given the same
14 analysis to Gordon & Silver and another firm because it's
15 nearly identical to what I just did.

16 MR. COSSITT: Right. One of these days we'll get
17 to litigate it maybe. But --

18 THE COURT: Well, you know, it would be nice to
19 get it resolved.

20 But -- and I remember I talked to like Renstadt
21 because he was -- a couple of years ago and he was
22 arguing -- we were discussing early on about critical
23 vendor motions.

24 And I remember Judge Wedoff from Illinois said
25 that he would never sign one. Which he then did, of

1 course, in United Airlines.

2 And he justifies them under 363(b), outside the
3 ordinary course and the contracts. And you can pick them
4 up. He even employs ordinary course professionals under
5 that. I don't think that that's -- I can't go that far.

6 MR. COSSITT: Right.

7 THE COURT: Especially if there are -- the debtor
8 has employed professionals on a salary. That's provided
9 for right in 327 in any event. So I don't think I'd go
10 there.

11 But Renstadt took the position -- and he's very --
12 you know, he argues most -- a lot of these bankruptcy cases
13 in the United States Supreme Court.

14 And he took the position that that language in
15 Adam's Apple was dicta. Of course he was taking the
16 oppos -- he was taking a position opposite to Adam's Apple
17 on the panel we were on.

18 MR. COSSITT: Um-hmm.

19 THE COURT: So I would expect him to take that
20 position.

21 I'm not sure that it is. But I don't know what
22 the Ninth Circuit -- how the Ninth Circuit would consider
23 it.

24 MR. COSSITT: And you would need to know which
25 people were on the panel.

1 THE COURT: Well, that's right. And, you know,
2 and there are some very very good judges who don't believe
3 that there is.

4 But now with the changes go 503 and the changes
5 to, is it 546, the reclamation statute, we see much --
6 many -- we don't see nearly as many critical vendor motions
7 as we used to.

8 MR. COSSITT: Right.

9 THE COURT: And they still need to be difficult.
10 And Easterbrook in KMart allowed them in certain
11 situations.

12 I had to go through that and I triggered that.
13 London Fog I had to go through all of that.

14 MR. COSSITT: Right. And that's a case where it
15 really makes a difference is if you're in an
16 administratively insolvent case and you don't get out of
17 the critical venue problem by going to the administrative
18 claim problem.

19 THE COURT: Well, that was --

20 MR. COSSITT: So.

21 THE COURT: It's a real issue.

22 MR. COSSITT: Yeah.

23 THE COURT: But they didn't take that particular
24 part up, or they settled it. I can't remember.

25 MR. COSSITT: Yeah. Well, all of it got settled

1 now. So that's been --

2 THE COURT: I think that's true. It has been now.

3 MR. COSSITT: Yeah.

4 THE COURT: But at any rate, no. I would like to
5 see it resolved.

6 A case that I entered a ruling on that got
7 affirmed by the district court and affirmed by the Ninth
8 Circuit, yesterday or the day before the United States
9 Supreme Court denied cert on it. And that was in N.C.P.
10 and Blanks.

11 And they were --

12 MR. COSSITT: Oh, good.

13 THE COURT: They were going to try to take the
14 catapult issue up, but cert was denied.

15 MR. COSSITT: Why don't they issue the Green
16 opinion.

17 THE COURT: Excuse me?

18 MR. COSSITT: I don't know why they don't issue
19 the Green opinion. That's been sitting up there over a
20 year.

21 THE COURT: You know, it's a tough one.

22 MR. COSSITT: Apparently they're struggling with
23 it, because they haven't issued it. So --

24 THE COURT: No matter what they say I'm going to
25 convinced I'm correct.

18

1 No, no. I know when I'm wrong. That to me, I
2 don't know how you can allow a person to have a homestead
3 if they're not living there. It's that simple to me.

4 MR. COSSITT: Okay.

5 THE COURT: And you can do all -- I know the
6 claims and the interest and what the University of Michigan
7 said. But you -- and it doesn't do you any good to cite to
8 the law of Florida or Iowa or Texas or any of the other
9 states that have unlimited homestead. Because they're not
10 talking to equity. There it's really a prop -- here the
11 homestead exemption is a matter of equity.

12 MR. COSSITT: Right.

13 Can we go off the record for a second?

14 THE COURT: Yeah. Let's go off.

15 (Proceedings concluded at 10:37:04 a.m.)

16

17

18

19 CERTIFICATE

20

21 I certify that the foregoing is a correct
22 transcript from the digital sound recording of the
23 proceedings in the above-entitled matter.

24

25 /s/ Marjorie G. Davall

April 24, 2009